**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**FIRST APPEAL No. 2793 of 2006**
**With**
**CIVIL APPLICATION No. 9344 of 2006**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE M.S.SHAH**
and
**HONOURABLE MR.JUSTICE AKIL KURESHI**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**NEW INDIA ASSURANCE CO. LTD. - Appellant(s)**
**Versus**
**YUSUFKHAN FIROZKHAN PATHAN & 2 - Defendant(s)**

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**Appearance :**
MR HASMUKH THAKKER for Appellant(s) : 1,
MR MTM HAKIM for Defendant(s) : 1,
RULE NOT RECD BACK for Defendant(s) : 2,
UNSERVED-EXPIRED (N) for Defendant(s) : 3,

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**CORAM : HONOURABLE MR.JUSTICE M.S.SHAH**

**and**

**HONOURABLE MR.JUSTICE AKIL KURESHI**

**Date : 17/11/2006**

**ORAL JUDGMENT**

**(Per : HONOURABLE MR.JUSTICE M.S.SHAH)**

In this appeal under Section 173 of the Motor Vehicles Act, 1988, the appellant-Insurance Company has challenged the judgment and award dated 23.3.2006 of the Motor Accident Claims Tribunal (Aux.), Vadodara in MAC Petition No.1485 of 1998 awarding compensation of Rs.4,46,534/- with proportionate costs and interest at the rate of 7.5% per annum on account of the injuries received by respondent No.1 herein (original claimant) in a motor vehicle accident.

2. On 14.6.1998, the claimant was travelling as a occupant in the jeep insured by the appellant-Insurance Company. The jeep was proceeding from Baroda to Dabhoi. The manner in which the accident took place – jeep driver losing control over the jeep and dashing with the stationary truck from the rear side - rightly justifies the Tribunal applying the doctrine of *res ipsa loquitor* and holding the jeep driver solely responsible for the accident in question.

On the question of quantum of compensation, the Tribunal found that the claimant had received 50% disability of the right lower limb and assessed the functional disability of the body as a whole at 12.5%. The Tribunal assessed the income of the claimant on the date of the accident at Rs.5784/-,

but considering his income on the date of the trial - Rs.9978/-p.m., the Tribunal assessed the prospective future income of the claimant at Rs.15,762/-. Taking the functional disability at 13%, the Tribunal assessed the loss of future income at Rs.2049/-p.m. i.e. Rs.24,588/-p.a.. Considering that the claimant was aged 42 years on the date of the accident, the Tribunal applied the multiplier of 16 and accordingly computed the compensation for loss of future income at Rs.3,93,408/-. The Tribunal awarded compensation under various heads as under:-

| | |
|---|---|
| Rs. 15,000/- | for pain shock and suffering |
| Rs. 23,126/- | for actual loss of income |
| Rs.3,93,408/- | for future economic loss |
| Rs. 15,000/- | for medicines, transportation etc. |
| Rs.4,46,534/- | Total |

Aggrieved by the above award, the Insurance Company of the jeep has filed the present appeal.

3. Mr Thakker, learned counsel for the appellant-Insurance Company has submitted that the Tribunal has erred in assessing the prospective income of the claimant at Rs.15,762/-. It is also contended that the multiplier of 16 years is very much on the higher side for the claimant aged 42 years.

4. On the other hand, Mr MTM Hakim for the original claimant has submitted that the award of the Tribunal cannot be said to be excessive, but at the most, if at all any reduction is justified, it would be only in respect of the multiplier adopted by the Tribunal.

5. Having heard the learned counsel for the parties, we find that although the Tribunal was not justified in arriving at the prospective future income of the claimant at Rs.15,762/- by aggregating the monthly income on the date of the accident and the monthly income on the date of the trial, considering the fact that the claimant was employed as a Tracer in the Narmada Project of the State Government and was getting monthly salary of Rs.5784/- in the year 1998 and was drawing monthly salary of Rs.9978/- in the month of June 2005 (Exh.27) on the date of the trial and also considering the fact that another pay revision is round the corner, we would not be justified in disturbing the assessment of prospective future income made by the Tribunal at around Rs.15,000/-, though for different reasons. Accordingly, while disapproving the method adopted by the Tribunal, we do not disturb the assessment of prospective future income made by the Tribunal at about Rs.15,000/-p.a. Applying the disability of 13%, as already assessed by the Tribunal, we find that the loss of future income will have to be assessed at Rs.2,000/- per month i.e. Rs.24,000/- per annum.

6. Coming to the multiplier, we do find some substance in the submission of the learned counsel for the appellant-Insurance Company that when the claimant was aged 42 years on the date of the accident and had another 16 years of service in the Government, the multiplier cannot be as high as 16. In the facts and circumstances of the case, we are of the view that the multiplier of 10 years would be reasonable. Accordingly, the compensation for future loss of income would work out to Rs.24,000 X 10 = Rs.2,40,000/-. The compensation for loss of past income assessed by the Tribunal at Rs.23,136/- is rounded off to Rs.24,000/-. The compensation for medical expenses, attendant charges and transportation is reduced from Rs.15,000/- to Rs.11,000/- in view of the fact that the bills produced by the claimant were only for Rs.7771/-.

7. Coming to the compensation for pain, shock and suffering and loss of amenities of life, Mr Hakim has submitted that Rs.15,000/- awarded by the Tribunal is on the lower side. Since the claimant had sustained communited fracture shaft femur on his right leg and iron rods and plates were inserted through surgery and the claimant had to undergo another surgery for removal of those rods and plates and the claimant also suffered injury on his left eye impairing his vision to some extent, we are of the view that the claimant is entitled to be paid Rs.25,000/- as compensation for pain, shock and

suffering and for loss of amenities of life.

8. In view of the above discussion, the claimant would be entitled to receive the following amounts under different heads:-

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|---|---|
| Rs.2,40,000/- | for loss of future income |
| Rs. 24,000/- | for loss of past income |
| Rs. 25,000/- | for pain, shock and suffering |
| Rs. 11,000/- | for medical expenses, attendant Charges and transportation charges |
| Rs.3,00,000/- | Total |

9. As regards the rate of interest, Mr Hakim has submitted that the rate of interest awarded by the Tribunal at 7.5% is on the lower side.

Though Mr Hakim's grievance does not appear to be without any substance, since the Tribunal has, in exercise of its discretion, awarded interest at the rate of 7.5%p.a., we are not inclined to disturb the same.

10. In the result, the appeal is partly allowed. The amount of compensation awarded by the Tribunal is reduced from Rs.4,46,534/- to Rs.3,00,000/-. The original opponents including the present appellant-Insurance Company shall pay the amount of Rs.3 lakhs with proportionate costs and interest at the rate of

7.5% per annum from the date of the claim petition till realization to the claimant within one month from today. Since the appellant had deposited 50% of the award amount in compliance with this Court's order dated 10.8.2006, the balance amount shall be deposited within one month from today.

11. Since the appeal is disposed of, the civil application for stay is also accordingly disposed of.

(M.S. SHAH, J.)

(AKIL KURESHI, J.)

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